

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 13

DANA SMITH

Case No.: 15-71331-ast

Debtors.

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**AFFIRMATION IN SUPPORT OF MOTION TO BE RELIEVED AS COUNSEL**

BRIAN P. SCHECHTER., an attorney at law admitted to practice before this Court,  
affirms the following to be true under the penalties of perjury:

1. I am associated with the law firm BERGER, FISCHOFF & SHUMER, LLP, attorneys for Dana Smith ( “Debtor”) in the above captioned Chapter 13 case. I am fully familiar with all of the proceedings had in this matter. This Affirmation is submitted in support of the instant application to be relieved as the attorneys of record for the Debtors pursuant to Eastern District of New York Local Civil Rule 1.4 and Eastern District of New York Local Bankruptcy Rule 2090-1.
2. On or about March 30, 2015, the debtor requested that BERGER, FISCHOFF & SHUMER, LLP (hereinafter referred to as “B, F & S”) represent her in connection with the instant Chapter 13 proceeding. B, F & S agreed to represent the Debtor on certain terms and conditions pursuant to a written retainer agreement. (Chapter 13 Retainer Agreement annexed hereto as Exhibit “A”). Pursuant to the Retainer Agreement the Debtors paid to B, F & S, a legal fee of \$8,000.00 plus the \$310.00 filing fee and a \$100 fee for credit counseling.

3. On March 30, 2015, a Chapter 13 Voluntary Petition was filed on behalf of the Debtor with this Court.
4. On March 30, 2015, Marianne DeRosa was appointed Chapter 13 Trustee in this matter and a meeting pursuant to 11 U.S.C 341(a) was scheduled for April 28, 2015.
5. The Chapter 13 filing was deemed deficient as numerous schedules were not filed at such time and the balance of the schedules were due on April 13, 2015.
6. On April 9, 2015, my firm filed a Motion to Extend the Deadline to File Schedules and on April 9, 2015, this Court granted an Order extending the time for submission of the missing schedules up and until April 21, 2015.
7. Communication by and between the Debtor and my firm has been strained and the Debtor has been uncooperative in the preparation of the schedules. There is a material breakdown of the attorney-client relationship and therefore, permission is requested to withdraw as counsel.
8. Local Bankruptcy Rule 2090-1 requires that:

An attorney who has been authorized to be retained or has appeared as the attorney of record for any party in any case or adversary proceeding may not withdraw or be relieved or displaced except by order after notice to the party represented, any adversaries, the United States trustee and the trustee. An application for such order shall include a showing by affidavit of satisfactory reasons for withdrawal or displacement and the posture of the case, including the status of any pending matter.

E.D.N.Y. LBR 2090-1.

9. In the present case, there is an extreme breakdown of communication by and between B, F & S and the Debtor. As such, there is a breakdown of the attorney-client

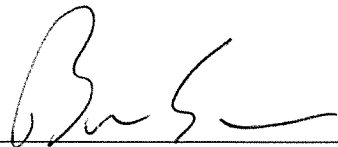
relationship and therefore, permission to withdraw as counsel is warranted. This breakdown is such that B, F & S can no longer fulfill it's obligations to the Debtors. See Rule 1.16 of New York's Rules of Professional Conduct, 22 N.Y.C.R.R. 1200.0 (2012).

10. Pursuant to Local Bankruptcy Rule 2090-1, the current status of the matter is that there is a 341(a) meeting scheduled for April 28, 2015 at 10:00 am at Room 561, 560 Federal Plaza, Central Islip, New York to be conducted by Trustee DeRosa.
11. This firm charges a reasonable and customary fee for a Chapter 13 filing and performs all the services required under the retainer agreement, however we shall leave it to the Court's discretion to fix an appropriate fee.
13. No prior application for the relief requested herein has been made.

WHEREFORE, in light of all of the foregoing facts and circumstances, BERGER, FISCHOFF & SHUMER, LLP respectfully requests that it be relieved as counsel for Dana Smith in this proceeding.

Dated: Woodbury, New York  
April 20, 2015

BERGER, FISCHOFF & SHUMER, LLP

  
By: Brian P. Schechter, Esq.